

1 Steve W. Berman (*Pro Hac Vice*)
2 Sean R. Matt
3 George W. Sampson (*Pro Hac Vice*)
4 HAGENS BERMAN SOBOL SHAPIRO LLP
5 1918 Eighth Avenue, Suite 3300
6 Seattle, WA 98101
7 Telephone: (206) 623-7292
8 Facsimile: (206) 623-0594
9 steve@hbsslaw.com
10 sean@hbsslaw.com
11 george@hbsslaw.com

12 Jeff D. Friedman (173886)
13 Shana E. Scarlett (217895)
14 Meghan R. Lang (221156)
15 HAGENS BERMAN SOBOL SHAPIRO LLP
16 715 Hearst Avenue, Suite 202
17 Berkeley, CA 94710
18 Telephone: (510) 725-3000
19 Facsimile: (510) 725-3001
20 jeffff@hbsslaw.com
21 shanas@hbsslaw.com
22 meganl@hbsslaw.com

23 *Attorneys for Plaintiffs in Young, et al.*
24 *v. LG Chem Ltd., et al., No. 12-cv-05129-YGR*

25
26
27
28
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

19
20
21
22
23
24
IN RE LITHIUM ION BATTERIES
ANTITRUST LITIGATION

25
26
27
28
No. 4:13-md-02420-YGR

25
26
27
28
MDL No. 2420

25
26
27
28
**DECLARATION OF STEVE W.
BERMAN IN SUPPORT OF
APPLICATION TO APPOINT
HAGENS BERMAN AS INTERIM
CLASS COUNSEL**

25
26
27
**[PORTIONS SUBMITTED IN
CAMERA]**

28
Date: April 3, 2013
Time: 2:00 p.m.
Judge: Hon. Yvonne Gonzalez Rogers
Crtm: 5, 2nd Floor

25
26
27
This Document Relates to:
ALL INDIRECT-PURCHASER ACTIONS

1 I, STEVE W. BERMAN, declare as follows:

2 1. I am the managing partner of Hagens Berman Sobol Shapiro LLP (“Hagens
 3 Berman”), counsel of record for Plaintiffs in *Young, et al. v. LG Chem Ltd., et al.*, No.
 4 12-CV-05129-YGR (N.D. Cal.) (“*Young*”). I have personal knowledge of the matters stated herein
 5 and, if called upon, I could and would competently testify thereto.

6 **Proposal of Hagens Berman**

7 2. I make this declaration in support of my firm’s application to be appointed as
 8 Interim Class Counsel for the putative class of indirect purchasers of lithium-ion rechargeable
 9 batteries and related products. In addition, Hagens Berman proposes a three-firm Plaintiffs’
 10 Steering Committee (“PSC”) which would include the law firms of Cohen, Milstein, Sellers &
 11 Toll, PLLC, Robbins Geller Rudman & Dowd LLP, and Goldman Scarlato Karon & Penny, P.C.,
 12 and which would be chaired by Hagens Berman.

13 **History of Hagens Berman’s Extensive Efforts in This Litigation**

14 3. Federal Rule of Civil Procedure Rule 23 allows this Court to consider “the work
 15 counsel has done in identifying or investigating potential claims in the action.”¹ As detailed below,
 16 my law firm spent significant time and resources investigating the potential claims in this action,
 17 far more than any other firm.

18 4. In the summer of 2012, months before the filing of the first complaint, Hagens
 19 Berman became aware of potential anticompetitive activities in the market for lithium-ion batteries.

20 5. We then began an extensive investigation into the lithium-ion batteries market.
 21 Hagens Berman retained two experienced economists with specific expertise in high-technology
 22 markets. These experts have served as economic experts in several high-technology antitrust
 23 litigations, including several that have been litigated in this District. Hagens Berman has worked
 24 extensively with these experts in other cases, and we are confident these experts possess a deep
 25 knowledge of high-technology industries and the behavior of high-technology markets.

26

27

28 ¹ Fed. R. Civ. P. 23(g)(1)(A)(i).

6. Over the course of the next several months, Hagens Berman and its experts collected worldwide economic data on the lithium-ion batteries market, including data from the Bank of Korea and the Bank of Japan, as well as various worldwide battery-related trade associations. Hagens Berman also collected data on lithium-ion battery raw material costs, including the pricing for such materials. Hagens Berman and its experts collected numerous Asian language documents discussing the market for lithium-ion batteries. These documents had to be translated and were then reviewed by Hagens Berman and its experts.

7. As a result of Hagens Berman's extensive analysis and the work of its economists, Hagens Berman was able to determine that the pricing for lithium-ion batteries during the relevant period of time covered by this litigation behaved in a way that was not consistent with either a high-technology product market or changes in raw material costs. For example, based on lithium-ion battery data obtained from the Bank of Korea, Hagens Berman's economists were able to create the following pricing analysis, among others:



DECL. OF STEVE W. BERMAN IN SUPPORT OF
APPL. TO APPOINT HAGENS BERMAN - No. 12-md-
2420-YGR
010330-11 597061 V1

1 8. Following Hagens Berman's extensive investigatory efforts, on October 3, 2012, it
 2 filed a class action complaint in this district on behalf of its indirect-purchaser clients and
 3 captioned *Young, et al. v. LG Chem, Ltd., et al.*, No. 12-CV-5129-YGR (N.D. Cal.). In drafting
 4 this complaint, Hagens Berman expended significant time and resources developing the allegations
 5 of this conspiracy. While the complaint does make reference to the existence of an ongoing
 6 criminal investigation being conducted by the United States Department of Justice, such references
 7 account for only 6 paragraphs in a 189 paragraph complaint. Thus, the allegations in the *Young*
 8 complaint are not simply the result of cutting and pasting from various articles discussing a
 9 criminal investigation. Rather, the allegations in the *Young* complaint are proprietary and the result
 10 of hard work and original analysis conducted by Hagens Berman.

11 9. Hagens Berman's efforts in thoroughly investigating this matter, and being the firm
 12 which initiated this litigation, is typical of its approach and is a source of pride within the firm. We
 13 believe it is something that sets our firm apart from other firms. We do not believe in copying
 14 others' work product, as many counsel did here. In fact, not only do we believe this approach sets
 15 us apart from other firms, but Courts do as well. In two recent cases, *In re Electronic Books*
 16 *Antitrust Litigation* (S.D.N.Y.) (Judge Cote) and *Online Travel Company (OTC) Hotels Booking*
 17 *Antitrust Litigation* (N.D. Tex.) (Judge Boyle), Hagens Berman invested significant resources into
 18 developing and initiating these cases. In both, throngs of firms filed copy-cat complaints and
 19 sought to minimize Hagens Berman's efforts in initiating the case. Yet the Courts recognized that
 20 Hagens Berman had developed these cases, and appointed Hagens Berman as class counsel. These
 21 are but two examples.

22 10. Approximately a week after Hagens Berman's filing of the *Young* complaint, on
 23 October 11, 2012, Cotchett, Pitre & McCarthy ("Cotchett"), along with its co-counsel, Saveri and
 24 Saveri, filed a complaint on behalf of its client, Nicole Gray, in *Gray v. Samsung SDI, Co., Ltd.*,
 25 No. 12-CV-5274-YGR (N.D. Cal.). Unlike the plaintiffs in Hagens Berman's complaint, Ms. Gray
 26 was a *direct*-purchaser of lithium-ion batteries.

27 11. On November 5, 2012, over a month following the filing of Hagens Berman's
 28

1 complaint in *Young*, Lieff, Cabraser, Heimann & Bernstein, LLP (“Lieff”) filed a complaint on
 2 behalf of its client in *Katz-Lacabe v. Hitachi, Ltd., et al.*, No. 12-CV-5681-YGR (N.D. Cal.). By
 3 this time, there had already been **18** additional cases filed throughout the country alleging anti-
 4 competitive practices in the lithium-ion battery industry. Following the filing of the *Katz-Lacabe*
 5 complaint, dozens of additional complaints were filed throughout the country.

6 12. On January 31, 2013, the Judicial Panel on Multidistrict Litigation (the “MDL
 7 Panel”) heard argument on various motions to centralize these litigations in a single judicial
 8 district. On February 6, 2013, the MDL Panel issued an order transferring all related cases to this
 9 Court. On February 15, 2013, nearly five months following the filing of the *Young* action, Cotchett
 10 filed a complaint captioned *Yee v. LG Chem, LTD., et al.*, No. 13-CV-703 (N.D. Cal.). At the time,
 11 Cotchett was still counsel for direct-purchaser plaintiff Gray in *Gray v. Samsung SDI, Co., Ltd.*,
 12 No. 12-CV-5274-YGR (N.D. Cal.). On February, 22, 2013, Cotchett formally withdrew from the
 13 *Gray* matter.

14 **Discussions Regarding Class Counsel**

15 13. Shortly following Lieff Cabraser’s filing of the *Katz-Lacabe* complaint, Lieff
 16 partner Eric Fastiff called Hagens Berman partner Jeff Friedman and asked whether Hagens
 17 Berman would support Lieff’s bid to be co-lead class counsel. Mr. Friedman explained to Mr.
 18 Fastiff that Hagens Berman had invested significant resources into the development of this case,
 19 had filed the first case, and was not prepared to agree to place Lieff into a leadership position over
 20 counsel in the 19 other cases filed before the Lieff case. Mr. Friedman asked Mr. Fastiff to support
 21 Hagens Berman given our leadership role in developing the case. Mr. Fastiff responded by saying,
 22 absent our firm agreeing to Leiff being a co-lead in the case, there would be a contested leadership
 23 fight.

24 14. Following the MDL Panel’s transfer of this litigation, discussions among plaintiffs’
 25 counsel concerning the organization of plaintiffs’ counsel ensued. At virtually every turn, the Lieff
 26 and Cotchett firms engaged in organized effort to diminish Hagens Berman’s efforts in this case.
 27 For example, following the MDL Panel’s transfer order, on March 6, 2013, Hagens Berman invited
 28

1 all indirect-purchaser plaintiffs' counsel (including the Lieff and Cotchett firms) to a meeting at its
 2 offices in Berkeley, California to address, among other things, the organization of counsel. Two
 3 days later, the Cotchett firm then sent a letter to all indirect-purchaser plaintiffs' counsel, without
 4 even mentioning Hagens Berman's March 6th invitation, inviting all counsel to a meeting at Lieff's
 5 San Francisco offices for the same day and same time as the meeting that Hagens Berman
 6 scheduled at its offices. This created a great deal of confusion amongst indirect-purchaser
 7 plaintiffs' counsel, as there had now been two meetings scheduled to occur simultaneously.
 8 Ultimately, we decided to rise above such petty actions, and counsel conducted a meeting at Lieff's
 9 offices on March 18 to discuss, among other things, organizational issues.

10 15. At no time leading up to the meeting, or during the meeting, did the Lieff and
 11 Cotchett firms include Hagens Berman in a leadership position. Instead, they proposed an
 12 unwieldy PSC which would include essentially any firm that wished to participate. This may be a
 13 way to garner votes, but it is not in the best interests of the class to have an unwieldy, inefficient
 14 structure and the bloated lodestar that usually follows.

15 16. It was not until March 20, 2013, that the Lieff and Cotchett firms offered Hagens
 16 Berman a leadership role in the organizational structure. These firms proposed that there be three
 17 class counsel – Cotchett, Lieff and Hagens Berman – as well as a PSC to be determined. Hagens
 18 Berman did not believe that having three co-lead counsel, as well as a PSC, was in the best
 19 interests of the class. Such a structure was simply too large and would lead to inefficiency,
 20 duplication, and waste. In addition, we did not feel it appropriate that two late filers who were
 21 following our initiative should have an equal leadership role and be elevated above firms who filed
 22 before them and who were not insisting on a lead role. Hagens Berman instead proposed that there
 23 be two lead counsel firms, and a PSC, with one of the lead counsel firms being Hagens Berman.
 24 We never received a response to this offer, and therefore, assumed it had been rejected.

25 **Hagens Berman's Confidential Fee Proposal**

26 17. Pursuant to Rule 23(g)(1)(C), the Court "may order potential class counsel . . . to
 27 propose terms for attorneys' fees and nontaxable costs." We propose the following percentage-

1 based attorneys' fees (including costs) based on recovery from each defendant at various stages of
2 the case and over various recoveries for the class. We have filed the remainder of this paragraph
3 under seal and not served it on any other party because (i) doing so is consistent with a
4 competitive, sealed bidding process, and (ii) if made part of the public record, defendants could try
5 and use this information to gain tactical advantage in the timing or structuring of settlement offers.

6 a. [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 b. [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

26 [REDACTED]

27 18. We believe that the foregoing fee structure provides for fair compensation while

28

1 minimizing the impact on the proposed class. We also believe that the Court will find our fee
2 proposal to be very competitive, if not compelling and in the best interests of the proposed class.

3 **Attaching Documents**

4 19. Attached hereto as Exhibit A is a true and correct copy of the firm resume of
5 Hagens Berman, as well as a description of each of the attorneys currently employed by the firm.

6 20. Attached hereto as Exhibit B is a true and correct copy of a Reporter's Transcript of
7 Proceedings taken in *Nicolow, et al. v. Hewlett-Packard Co., et al.*, No. 12-CV-5980-CRB (N.D.
8 Cal. Mar. 1, 2013).

9 21. Attached hereto as Exhibit C is a true and correct copy of the December 21, 2011
10 Case Management Order in *Electronic Books Antitrust Litig.*, No. 11-md-2293 (DLC) (S.D.N.Y.).

11 22. Attached hereto as Exhibit D is a true and correct copy of the March 1, 2013 Order
12 Appointing Plaintiffs' Interim Lead and Liaison Counsel in *Online Travel Company (OTC) Hotel*
13 *Booking Antitrust Litig.*, No. 12-cv-03535-B (N.D. Tex.).

14 23. Attached hereto as Exhibit E is a true and correct copy of the December 18, 2012
15 Supplemental Report And Recommendation of Special Master re Allocation of Attorneys' Fees in
16 the Indirect-Purchaser Class Action in *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. 07-md-
17 01827-SI (N.D. Cal.).

19 I declare under penalty of perjury under the laws of the United States that the foregoing is
20 true and correct.

21 Executed this 28th day of March 28, 2013 at Seattle, Washington.

23 _____
24 /s/ Steve W. Berman
STEVE W. BERMAN
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on March 28, 2013, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses registered, as denoted on the Electronic Mail Notice List generated by the CM/ECF system, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the list generated by the CM/ECF system.

/s/ Steve W. Berman
STEVE W. BERMAN

DECL. OF STEVE W. BERMAN IN SUPPORT OF
APPL. TO APPOINT HAGENS BERMAN – No. 12-md-
2420-YGR
010330-11 597061 V1